

## The Supreme Court: A 17-Year Era Comes to an End

## President's News Conference on Resignation of Chief Justice

Following is a transcript of a statement in Washington yesterday by President Reagan announcing the resignation of Chief Justice Warren E. Burger and key questions and answers that followed, as recorded by The New York Times:

## OPENING STATEMENT

On May 27, 1986, Chief Justice Burger advised me that he wanted to devote his full energies in the coming year to the important work of the commission on the bicentennial of the Constitution, and for that reason would be retiring as Chief Justice of the Supreme Court as of the end of the current term. Today, I received with regret Chief Justice Burger's letter formally notifying me of his retirement. And immediately after my conversation with the Chief Justice, I directed my chief of staff, together with the Attorney General and the counsel to the President, to develop recommendations for a successor.

And I'm pleased to announce my intention to nominate William H. Rehnquist, currently an Associate Justice of the Supreme Court, as the new Chief Justice of the United States.

Upon Justice Rehnquist's confirmation, I intend to nominate Antonin Scalia, currently a judge of the United States Court of Appeals for the District of Columbia Circuit, as Justice Rehnquist's successor.

In taking this action, I am mindful of the importance of these nominations. The Supreme Court of the United States is the final arbiter of our Constitution and the meaning of our laws.

The Chief Justice and the eight Associate Justices of the Court must not only be justurers of the highest competence, they must also be attentive to the rights specifically guaranteed in our Constitution and the proper role of the courts in our democratic system.

In choosing Justice Rehnquist and Judge Scalia, I have not only selected judges who are sensitive to these matters but through their distinguished backgrounds and achievements reflect my desire to appoint the most qualified individuals to serve in our courts.

Justice Rehnquist has been an Associate Justice of the Supreme Court since 1971, a role in which he has served with great distinction and skill. He is noted for his intellectual powers, the lucidity of his opinions and the respect he enjoys among his colleagues.

**Senate Action Urged**  
Judge Scalia has been a judge of the United States Court of Appeals for the District of Columbia Circuit since 1982. His great personal energy, the force of his intellect and the depth of his understanding of our constitutional jurisprudence uniquely qualify him for elevation to our highest court.

I hope the Senate will promptly consider and confirm these gifted interpreters of our laws.

And in closing, I want to say a word about Chief Justice Burger. He has led the Court, the Supreme Court, for 17 years, a time of great change and growth in the consolidation and stability in the decisions of the Court.

Under Chief Justice Burger's guidance, the Court has remained faithful to precedent while it sought out the principles that underlay the Framers' words.

He is retiring now in order to devote his full attention to a momentous occasion in our country's history; the observance in 1987 of the 200th anniversary of the Constitution. This is an endeavor for which all Americans will be grateful, and to which I and members of the Administration will lend our total support.

I am proud and honored to stand here today with Chief Justice Burger, with Justice Rehnquist and with Judge Scalia, and to discharge my constitutional responsibilities as President of the United States. Thank you all, God bless you.

## QUESTIONS AND ANSWERS

## Impact on Abortion

Q. Mr. President, what impact do you think this will have on the abortion issue, perhaps the most emotional issue facing the Court?

A. It probably won't surprise you when I tell you that I'm not going to take any questions now. Chief Justice Burger has been available for any questions you might have of him. And I think the other —

Q. Are you satisfied that the judge agrees with you on the abortion issue?

A. I'm not going to answer any questions. If I start answering one —

## Process of Selection

Q. Mr. President, what was the process which led you to Judge Scalia? Did you know him before? Or did your people come to you and recommend him? What was the process?

A. (Unintelligible)

Q. Well, surely you must think, sir, that he agrees with you on such issues as abortion, affirmative action, prayer in the schools?

A. That's a question. And as you said, Q. Why didn't you appoint Mr. Meese?

A. I can't say no questions. I can say no answers.

Q. Yes, you're right.

## The New Justice

Q. Could you tell us a little bit about the new Justice, whatever you can.

Q. Do you know him personally?

A. (Unintelligible)

Q. Do you want to take questions on another subject? Have you heard from Governor on the summit yet, sir?

A. No. I think the subject today is justices.

Q. Did Justice Burger recommend his successor?

A. No. The Justice said that he would not presume to do that, to discuss with me individuals and give him opinion of them.

## Summary of Tenure

Q. Mr. Chief Justice, maybe it's appropriate now to ask you to give us your thoughts, what, since 1969, 17 years on the Court?

BURGER. Seventeen years, yes.

Q. Sum up your tenure. What do you think you've done for?

A. That would take me about 17 years, and you don't want to spend that much time.

## Reason for Leaving

Q. Could you explain a little bit why you're



NEWS CONFERENCE: President Reagan entering the briefing room at the White House yesterday with Chief Justice Warren E. Burger.

leaving the Court?

A. For one primary reason: that the 200th anniversary of the Constitution got a late start, the celebration got a late start. It is vastly underfunded, and we're going to have the Devil's own time in trying to do the kind of a job that ought to be done for this great event.

John Warner, the chairman of the '76 event, you remember, was drafted from his job as Secretary of the Navy, which he did not want to leave. And he told me, he being an old friend, he told me the subject came up last year that the job of chairman was a full-time job.

I already have two full-time jobs, as you know. A job as Justice of the Court and the other job with all the vast administration problems. And it just isn't feasible to have three full-time jobs.

## Health Not a Factor

Q. Is it a matter of health, sir? I mean, people don't leave the Court except for matters of health, normally.

A. Well, you make the diagnosis. Do I look as though I'm falling apart?

Q. Well, it's not how you look, it's how you feel. I mean, was it a matter of health, sir?

BURGER. Never felt better in my life.

## Direction of Court

Q. Are you pleased with the direction the Court has taken? How would you assess your tenure on the Court?

A. I wouldn't try to assess it. I'll leave that to other people to do.

Q. Do you leave it with the satisfaction, sir, that you have accomplished what you set out to?

A. Not everything I set out to, no.

## Intermediate Panel

Q. Would you tell us a little bit about what you've said not to have finished?

A. What I did not finish was an absolute imperative, and that's to experiment with the intermediate panel that is now pending before the Congress. It's a five-year experiment. It won't cost any money, and that's perhaps why it doesn't attract much attention in Washington. It literally will cost nothing, except to bring the judges from wherever they are into Washington.

Q. Did you participate in a judgment on the Gramm-Rudman rule?

A. I'm going to answer this other question first. That bill is pending. It would take about 50 cases a year off the Supreme Court. And at the present time, if you're doing your homework, those of you who are regulars on the Court, you will find that there are 50 to 100 cases denying cert where one, two or three

Justices file a dissent and say this case ought to be taken that isn't taken.

You know, we've gone from Chief Justice Warren's first year with 63 signed opinions, and we've been running over 150 for the last four or five years. We've gone from 1,400 and some filings back in Earl Warren's day to nearly 5,000, nearly 100 a week.

The Court's got to have some relief somewhere. I'm astonished that we haven't had some judges fall over with coronary thrombosis or some other illness of exhaustion and overwork. But going back specifically, the only health problem that I know I have is the one I have had since I was 10 years old, and that's a polio back from having polio. Apart from the ordinary mental deterioration that occurs after age 40.

## Approval of Scalia

Q. Do you approve of the appointment of Judge Scalia?

A. Well, the Constitution doesn't give the Chief Justice any authority on the subject. I have known each of these men — I've known Justice Rehnquist as a colleague for now — what, 15 years?

REHNQUIST. Fifteen years, Chief.

BURGER. And I've known Judge Scalia since the time he was an Assistant Attorney General. He's participated in extrajudicial activities, like being a member of the American team visiting England to study some of their methods. We are not close friends. I have a high regard for each of them.

Q. Sir, have you grown weary of being Chief Justice, sir?

A. No, I'm not weary of it, no. I would like to have stayed until — I would like to have stayed until we got some of these — this remedy that I told you about, but I think the constitutional celebration is more important and, after all, there are some other people who can carry on this work. It's just up to the Senate.

## Rehnquist Comments

Q. Justice Rehnquist, could we ask you your thoughts about being nominated for the highest judicial post in this country?

REHNQUIST. Well, I'm deeply gratified by the confidence that the President has shown in me by making the nomination. I'll do my best to deserve that confidence.

Q. Mr. Rehnquist, how is your health? You've had some problems in the past.

A. I think I won't answer any further questions. I think I'll leave that to the Senate confirmation committee.

## Scalia Comments

Q. Mr. Scalia, could you share your

thoughts with us as a new nominee, as much as you can say?

SCALIA. Yes, on the substance of it I think I'm with Justice Rehnquist. I know a good idea when I hear of one.

Q. What about your personal thoughts, though?

A. My personal thoughts are, for somebody who spent his whole professional life in the law, getting nominated to the Supreme Court is the culmination of a dream, of course, and I'm greatly honored that the President would have such confidence in me and hope that the Senate will do so as well. And I'll certainly do whatever I can to live up to it.

## Questions on Abortion

Q. Did Administration officials, sir, question you on your views on Roe v. Wade?

A. I think I'll respond the way Justice Rehnquist did.

Q. I did ask you your personal view of that subject, sir; I'm wondering whether you were questioned before your selection was made on that subject.

A. If the Senate wants to ask that, they may, but I don't want to get into it.

Q. Do you expect controversy in the Senate confirmation?

A. I have no idea. I'm not a politician.

## High Court on TV

Q. I'd like to ask Judge Rehnquist an administrative question. How do you feel about television coverage of the Supreme Court?

REHNQUIST. You can get an administrative question if you want to, but it comes under the same rubric that I indicated a moment ago. I'll defer all questions like that.

## Tradition or Change

Q. Will you carry on in the same tradition as Chief Justice Burger? Do you consider it a mandate to carry on in the same tradition as Chief Justice Burger, or would you make changes?

A. Again, I will defer those questions.

## Civility on the Court

Q. Mr. Chief Justice, some people suggest that the Supreme Court has become more sharply divided under your tenure. First of all, do you agree with that? And how would you characterize the general level of civility among the Justices today?

BURGER. It has not become more sharply divided. If you go back and read the opinions over the 40 years, you'd find there just isn't any substance to that. The reason there are nine people up there — and there are days when I'd be there by myself — is the reason you have nine is to have this interchange and interplay. It goes on all the time. In the 17 years I have been there presiding over the conference, never once, never once, has a voice been raised in any discussions. They're vigorous discussions, as they should be — always will be, I hope. We have cordial and good relations. We can disagree in a civilized way, and we do.

## Judicial Philosophy

Q. Since you are not going before the Senate, perhaps you can give us your views on whether these new appointments will change the philosophy or direction of the Court in the next few years.

A. Well, I could if I thought about it a great deal, but I haven't thought about it so I would not undertake it.

## Timing of Resignation

Q. When did you first hear that it was going to be announced?

A. I don't know, a day or two ago.

Q. What will you miss most about being Chief Justice?

A. Really, nothing.

Q. Justice Burger, was your decision to retire at this time related at all to a desire to have President Reagan appoint your successor?

A. Well, if that had been my desire I'd have quite a bit of time to wait here.

Q. Chief Justice, can you tell us a little bit about your tendering of the resignation with the President? Did you personally —

A. I just gave it to him 10 minutes ago.

Q. And what happened? Can you talk a little of the conversation?

A. He said, "Thank you," as I remember, I think maybe he and his staff were a little relieved. All they had was word of mouth from me before, and if I hadn't shown up with that letter today they'd have really had a problem.

Q. Mr. Chief Justice, what was the reason for the timing of the announcement today of the change in the Court? The President said you decided on your resignation last month; why was it all announced today?

A. You'll have to ask the President that, I don't know the timing.

Q. Mr. Chief Justice, if it were not for the bicentennial, would you have retired when? Do you have any views —

A. My letter, as you will see, fixes the effective date as July 10. We hope to conclude the term before that, but there's always a certain amount of debris, administrative debris, to be cleared up.

Q. Were it not for the bicentennial, would you have retired? At what —

A. No, if it were not for the bicentennial, I would not have retired.

## The Toughest Cases

Q. What was your toughest case? Some people have suggested it was the Nixon tape case. After all, he appointed you to the Court and you joined in a unanimous judgment which forced him to turn over those tapes, which were his undoing.

A. That was not the toughest.

Q. What was it?

A. I really don't know; I'd have to give you a list of about 25 or 30. In fact, a couple that are coming down very soon, and that one last week that you fellows all missed.

Q. When will we get that Gramm-Rudman opinion?

A. Sometime before the 16th of July, I hope.

## Screening Process

Q. Judge Scalia, would you call yourself a tough judge?

SCALIA. I think that's in the category of questions I think —

A. Can you tell us when you were first approached by the Administration? Just give us a sense of the timing, when you first heard and your feelings.

A. I think the President wants that to be known, I'm sure he'll tell us.

Q. Judge Scalia, many of the judges appointed by this Administration are said to have been subjected to a rigorous screening process conducted under Attorney General Meese. Were you at all, Roe v. Wade aside, asked any of your positions on various points of law?

Q. No one spoke to you, sir?

A. I speak to people all the time.

Q. Judge, I have a question that you can answer. Can you give us the pronunciation of your name?

A. I'd be happy to do that: Skuh-LEE-yuh.

## Burger's Workload

Q. Mr. Chief Justice, did you at any point previously tell the President that, you know, you just don't have time to run the bicentennial commission, the constitutional — as a matter of fact, you're the Chief Justice of the United States and you've got to do that?

BURGER. Nobody that I know of could do all three of the jobs that I spoke of that I've been trying to do for 17 years. One week recently, after I had been carrying around a walking bag, one of my staff informed me that I had logged 109 hours that week. Now 80 and 90 I can handle, but I'm getting a little too old for 105.

Q. What has us all astounded here is the fact that you're the Chief Justice of the United States and you're putting that aside to handle a job that in fact is going to be over in a year or so.

A. No, three years.

Q. Well, three years, whatever. I think — did you figure perhaps you could let the President take that one off you so you could remain as Chief Justice? Or were you simply weary of being Chief Justice?

A. No, I wasn't weary of being Chief Justice. It's a lot of fun. But I go back to what I said first. We have inadequate preparation for the bicentennial of the Constitution. It's a remarkable story; it's one of the great, great stories in American history, and it's our job to tell it. And we're just getting organized; we haven't got a main headquarters yet, we're scattered in three buildings. We've got, for Washington, a piddling appropriation of \$12 million, and over 10 years ago, John Warner had over \$200 million.

If we're going to celebrate this thing in the proper way, and have people get an understanding in this country and elsewhere, about what freedom means, and that this is the instrument that gave that freedom, how it works, there's a lot of work to be done. I expect to be working literally full time.

## Rehnquist's New Job

Q. Justice Rehnquist, you have had a reputation more as a thinker and writer on the Court than as an administrator. Do you, too, consider it the culmination of a dream to be Chief Justice and thus have to take on all these administrative tasks?

REHNQUIST. I wouldn't call it the "culmination of a dream, but it's not every day when you're 61 years old that you get a chance to have a new job. And you take on some things you don't like along with a lot of things that you do like.

BURGER. That strikes as a perfect parallel. Bill Rehnquist is the same age as I was when I was nominated — back in the Garfield Administration, I think it was.

## Changes in the Court

Q. Mr. Chief Justice, how have you seen the Court change philosophically during your tenure?

A. Well, if you would go to the history of the Supreme Court of the United States, or of the country, you'll find that at different periods there are different needs and different problems, and there are different answers. And then sometimes you find that an answer that you gave two years ago, or three or five, doesn't quite fit, and you adjust it. We have been doing some adjusting. That was done in the previous 15 years as far as I am able. I expect that that adjusting that was done in the 15 years before my tenure began.

Q. Do you regret any of your decisions, sir? Or any of the opinions you wrote? Would you like to change them, looking back?

A. I wish some of them were a little shorter.

Q. Mr. Chief Justice, if I could follow up on that. You said that there had not been nearly the changes during your tenure as in the preceding 15 years. Does that mean there was less need for change, or it just did not happen?

A. I'll leave that to you; objective observers are a better judge of that than I.

## Burger's Letter to Reagan and the Reply

Special to The New York Times

WASHINGTON, June 17 — Following is the exchange of letters between President Reagan and Chief Justice Warren E. Burger, both dated June 17, 1986, as released by the White House:

## Burger's Letter

My dear Mr. President:

Last year when you asked me to be Chairman of the Commission on the Bicentennial of the United States Constitution, I agreed to undertake at least to try to get the program under way. My old friend John Warner who was similarly "drafted" to chair the 1976 Commission later cautioned me that the chairmanship of such a project was a full time enterprise.

I have discovered that John was right. Because my purely judicial work and my administrative duties, I already had two "full time jobs."

I know we share the view that the story of our great constitutional system must be recalled to the American people — and indeed told to people everywhere who seek

freedom. To tell that story as it should be told is an enormous and challenging task. I fear, however, it is now too late to enlist a new full time chairman. Accordingly, I have resolved to request that I be relieved as Chief Justice of the United States effective July 10, 1986, or as soon thereafter as my successor is qualified, pursuant to 28 U.S.C. Sec. 371(b).

It has been an honor and privilege to hold this great office for 17 years during a stirring period in the history of the Republic and of the Court. I am grateful that our system resolved to request that I be relieved as Chief Justice of the United States effective July 10, 1986, or as soon thereafter as my successor is qualified, pursuant to 28 U.S.C. Sec. 371(b).

Sincerely and respectfully,

## Reagan's Reply

Dear Mr. Chief Justice:

It is with great regret that I today accept your retirement as Chief Justice of the United States, effective at the conclu-

sion of the Court's current term. Your service on the Court, extending over 17 years, has set a high standard for your successors, and you leave with the gratitude of the Nation your service well.

In our discussions over the past year, you have emphasized to me the importance you attach to the work of the Commission on the Bicentennial of the United States Constitution, of which you serve as Chairman. I respect your desire to retire from the Court in order to devote your full energies to the important objectives of the Commission. But I must express regret that your extraordinary service will no longer be employed on our highest court.

Your career exemplifies the highest traditions of this great Nation, having served your country in the Department of Justice, as a Judge of a United States Court of Appeals, and as Chief Justice of the United States. I can wish you good luck and Godspeed in the important endeavor on which you are now embarked.

With warmest wishes,

Sincerely,

RONALD REAGAN